

MINUTES
BOARD OF ADJUSTMENT
January 4, 2007

THOSE IN ATTENDANCE

Gary Soule, Chairman	Jason Jaggi, City Planner
Rick Bliss	Leland Curtis, City Attorney
Mel Disney	
Victor Cohen	
Kevin Williams	

Chairman Soule called the meeting to order at 5:10 p.m. He welcomed everyone to the meeting, introduced himself and City staff and asked that the other members of the Board to introduce themselves.

MINUTES

The minutes of the meeting of December 7, 2006 were presented for approval. The minutes were approved, after having been previously distributed to each member.

After the introductions, Chairman Soule indicated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of 5 members and that four members must vote in favor of a variance in order for the requested variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place.

Chairman Soule indicated that there are two matters to consider this evening and confirmed that the applicants were in attendance.

AN APPEAL FROM ALAN BERKOWITZ, ARCHITECT ON BEHALF OF CARYN FINE & ROBERT KANTERMAN, OWNERS, FOR THE PROPERTY AT 7407 CROMWELL

Everyone who was in attendance at the time of swearing-in who wished to speak in regards to the variance request was sworn-in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide an overview of the appeal.

Jason Jaggi began a PowerPoint presentation, explaining that the subject property is zoned R-2 and that the variance being requested is from the separation requirement between the primary structure and accessory structure. He stated the applicants are requesting a 6-foot variance from the 10-foot separation requirement to allow for the construction of an addition (family room). A slide depicting the site layout and area sites was shown. He stated the property is an interior lot. Slides depicting the subject property were also shown.

Rick Bliss referred to the properties addressed 901 Audubon and 7437 Cromwell. He asked Jason if the City granted variances for these properties.

Jason Jaggi indicated that to his knowledge, variances were not granted for these properties. He continued with the PowerPoint presentation, asking that the members keep in mind that the site layout slide is not to scale; that it is drawn from an aerial photo. He stated that currently, the separation between the subject house and accessory structure (garage) is about 19 feet.

Chairman Soule thanked Jason for the project overview.

Leland Curtis presented the following City Exhibits and requested that they be entered into the record, as follows: City's Code of Ordinances, specifically the Zoning Ordinance Article 15.8 (2) and City's Master Plan, application for Zoning Review, Zoning Review denial letter as prepared by Jason Jaggi, application for appeal, public hearing notice which was duly advertised, drawings submitted by applicant, supporting documents and staff's report. City staff's presentation is also entered into the record.

Mr. Berkowitz distributed an informational package to the members, to be marked as Applicant's Exhibit. (Note the pages were pre-labeled by the applicant as Exhibits A – F). Mr. Berkowitz apologized for the inability to present a hardship or practical difficulty as these difficulties do not exist. He referred to his research of zoning ordinances and believes this particular requirement (10-foot separation requirement) originates back to the 1916 New York City Ordinance which was adopted to control overcrowding of lots. He stated that the constitutionality of such ordinances was established in 1926 when the US Supreme Court ruled in *Euclid vs. Ambler* that for a zoning ordinance to be declared unconstitutional, it had to be "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." He stated that he is not a lawyer and is not qualified to judge the constitutionality of the 10-foot rule as applied generally in the Ordinance, but believes this requirement denies the owners reasonable use of their property for current lifestyles. He stated that he attempted to persuade the owners not to pursue with the variance request, but was unsuccessful. He stated they attempted to comply with the 10-foot separation rule. He indicated that four alternatives were considered, but that each of these alternatives were rejected by the owners because they did not satisfy their objectives for the addition. He stated he talked with the City's Building Official, Steve Askins, and that Steve indicated he saw no reason for the 10-foot separation rule other than it has existed for a long time. Alan referred to Exhibit E, indicating that there is no fire separation rule issue here. He then referred to Exhibits A-C, stating that only 35 square feet of the proposed addition will encroach into the 10-foot separation requirement. He indicated that

the proposed accessory structure is under the total allowable area requirement for rear yard accessory structures as well as the total impervious coverage allowance. He stated the accessory structure will only encompass 21.3% of the 35% allowable area and that the total lot impervious coverage after the addition will be 37.7%, under the 55% allowable. He stated he was able to provide the owners with an acceptable design and still meet all the required rear and side yard setbacks. He stated this lot, located in the Moorlands, is 80-foot wide and that between 1/4 and 1/3 of the lots in the area are of this size whereas the remainder of the lots are 60-foot wide. He advised the members that Dr. Kanterman is out of town and therefore, could not attend this meeting, but that Ms. Fine would like to speak with regard to the request.

Chairman Soule asked that the applicant's Exhibits be marked 1 – 6 (versus A – F).

Ms. Fine stated they have lived in this home for 8 years and that she loves her home, the street, neighborhood and community. She stated she serves as Block Captain and is an active Family Center member. She stated her husband is Treasurer of the Moorlands Homeowners Association. She stated that she believes this to be a modest addition and believes the variance request is modest as well. She reiterated that only 35 square feet of the addition imposes on the 10-foot separation rule. She stated the variance will improve their ability to access the addition and not result in an odd-shaped addition. She indicated that she spoke with her neighbors on both sides and directly behind her property and all have no objections (copies of the neighbors' (7401 & 7415 Cromwell and 7408 York) written approvals were distributed and marked as applicant's Exhibit 7). Ms. Fine asked for the Board's consideration and approval of the requested variance. She indicated that this small variance will have the greatest impact on herself and her husband as the owner's of the property. She asked if the Board had any questions for her.

Anne Martin asked the existing square footage of the home.

Ms. Fine indicated about 3,000.

Anne Martin asked if the home now has a living room.

Ms. Fine replied "yes".

Anne Martin asked how many occupants reside in the home.

Ms. Fine replied "4 plus a dog".

Anne Martin indicated that her major question relates to the hardship requirement in that she does not believe a hardship exists in this case. She commented that the lot looks typical for the area.

Jason Jaggi stated it is typical.

Anne Martin commented that there is a reason for and an importance in setback requirements. She stated that the neighbors to the east and west will be looking at 75-feet of an unbroken wall except for a small, 4 foot “break”. She stated she believes this situation does restrict air and sunlight and that it seems that, since the owners have lived in this house for 8 years, the size of the home has been tolerable and that for these 8 years, they have enjoyed the home.

Ms. Fine advised the members that they have been looking at other homes for 5 years and that they have not found anything better than what they already have. She stated they are enjoying the home to the best of their ability. She stated the square footage is not the issue, it is the function of the space that is the issue. She reiterated that her neighbors have carefully reviewed their project and have no objections and that only 35 square feet of the entire addition does not comply with the separation requirement.

Anne Martin commented that once the change is made, it is permanent; however, families come and go. She stated again about that 75-foot “wall” with only a 4 foot “break” between the garage and the house and if she were a neighbor, would impinge on her enjoyment of her lot.

Ms. Fine stated that there is only a small percentage of lots in the area with detached garages - within two blocks, only 7 lots have detached garages (on Cromwell & York).

Mel Disney asked the date of the Zoning Ordinance.

Jason Jaggi indicated it was last updated in July, 2006. He stated he believes it (the Zoning Ordinance) was originally adopted in the 30’s or 40’s.

Mel Disney asked when the subject house was constructed.

Ms. Fine replied “80 years ago”.

Mel Disney commented that the house was built prior to the adoption of a Zoning Ordinance. He stated that previously, Mr. Berkowitz used the word “arbitrary”; he stated he takes exception to that comment.

Mr. Berkowitz indicated that he did a limited amount of research and wanted to determine where the 10-foot separation rule came from. He stated he was able to obtain some historic information about New York City. He stated he used the word “arbitrary” because he could find no specific reference to why accessory buildings needed to be separated from the primary structure by 10 feet. He stated he simply believed that the rule originated in New York City and spread throughout the U.S. from there.

Mel Disney stated that “arbitrary” is something that is not set by law and believed the use of that word is not appropriate in this situation.

Mr. Berkowitz commented that if the addition were built out to the 30 foot rear setback and the 10-foot separation complied with, the owners would end up with an odd shaped addition.

Anne Martin indicated that a few years ago, the rear setbacks were changed to make them more lenient.

Jason Jaggi stated that although he cannot answer historical questions, Steve Askins has worked for the City for over 30 years and in his discussions with him, it was noted that this rule has been in effect the entire time. He stated it may have been borrowed from another municipality as Alan previously mentioned. He agreed that the 10 foot separation rule has nothing to do with fire or building codes and believes that it simply provides for a means of separation between the house and accessory structure. He agreed that the home probably pre-dates the Zoning Ordinance.

Rick Bliss asked what if the house and garage were “tied” together.

Jason Jaggi indicated that if that were the case, there would be a significant rear yard setback encroachment as once the two structures are connected, the garage then becomes part of the principal structure requiring rear setback compliance.

Alan Berkowitz advised the members that the owners asked if they could tear down the garage in which he told them that could be done except there would be a great impact on the rear yard. He stated he pushed the client not to apply for this variance but upon their insistence, as his client, he had to try.

Rick Bliss stated that if the addition is 330 square feet, only approximately 10% of the total addition would be in violation of the 10-foot separation rule.

Ms. Fine advised the members that the addition is next to the kitchen and that it makes sense to do it this way so that it is usable and accessible.

Rick Bliss commented that he liked the alternative plan as shown on Sheet A-4.

Chairman Soule suggested carving out the 35 square feet that is in non-compliance.

Ms. Fine commented that the alternative would leave them with an unusually shaped room and to move further to the east would impact the living room and would enclose their single source of light to the living room.

Alan Berkowitz stated that they are only allowed a 3 foot roof overhang (per the Zoning Ordinance). He stated that would not be cost-effective and that the 35 square feet is significant over the design.

Chairman Soule asked staff if the variance would affect public safety and welfare.

Jason Jaggi replied “no”.

Chairman Soule asked for clarification that the requested addition does not encroach into the side or rear setbacks.

Jason Jaggi indicated that is correct.

Chairman Soule asked staff if the placement of the addition primarily affects the subject property.

Jason Jaggi replied “yes”. He stated the architect went to great lengths to try and comply with the Zoning Ordinance requirements and has “notched out” a corner where the steps are located to provide a break in the plane. He reminded the members that only a small portion of the addition is in violation of the 10-foot separation requirement.

Chairman Soule asked staff if it is believed that the addition adversely effects surrounding property.

Jason Jaggi replied “no”.

At this time, Alan Berkowitz presented applicant’s Exhibit 8 (photograph of an existing property-address and owner information not revealed). He stated that he believes the improvements to the property were built legally and is not aware of a variance having been sought for the property. He stated this photograph depicts a situation very similar to what his clients are asking for, as there is only a 4-foot separation between the house and garage. He stated that there is also a “wing” on the addition that closes off that 4-foot “space”.

Anne Martin commented that with regard to the photograph, she does not believe this situation observes the spirit of the Zoning Ordinance and does not believe that that much building and concrete is within the look or spirit of what Clayton desires.

Alan Berkowitz asked what the repercussions are if this application is withdrawn.

Chairman Soule advised Mr. Berkowitz that if this application is withdrawn, the same or similar application can be filed again within 30 days; however, if a vote is taken and the variance denied, this or a similar request cannot be submitted for a period of one year.

Jason Jaggi concurred.

After Mr. Berkowitz briefly conferred with Ms. Fine, the decision was made by the applicants to proceed with a vote.

Mr. Curtis indicated that he would be happy to provide legal advice to the Board if they so desired.

Chairman Soule stated he would be happy to hear from Mr. Curtis.

Mr. Curtis commented that the applicant has stated that there is no extreme hardship, but based on the submittal and alternatives approached, the pre-existing location of the garage and the fact that the structure pre-dates the Zoning Ordinance, an argument could be made that there is a practical difficulty. With regard to the regulation being unconstitutional or arbitrary is not for this Board to decide.

Anne Martin asked Mr. Curtis to re-define the practical difficulty.

Mr. Curtis stated the location of the garage on the site creates a practical difficulty whereas others in the area do not have that difficulty.

Chairman Soule reiterated that the practical difficulty that exists is not the fault of the applicant (i.e. the existing location of the garage is not the fault of the applicant).

Mr. Curtis agreed.

Anne Martin asked if this difficulty is unusual in the neighborhood.

Mr. Curtis commented that there may be others that are similar.

Being no further questions or comments, Chairman Soule made a motion to approve the 6-foot variance from the 10-foot separation rule for the construction of an addition. The motion was seconded by Victor Cohen. The motion received the following roll call vote: Ayes: Chairman Soule, Rick Bliss, Mel Disney, Victor Cohen. Nays: Anne Martin.

Motion carried. The variance was granted.

AN APPEAL FROM CALIFORNIA CUSTOM DECKS ON BEHALF OF EDWINA BUSSMANN, OWNER, FOR THE PROPERTY AT 652 LANGTON

Chairman Soule asked Jason Jaggi to provide an overview of the appeal.

Jason Jaggi began a PowerPoint presentation, explaining that the subject property is zoned R-2 and that the variance being requested is from the rear yard setback requirement for a deck. He stated that there is an existing deck that needs replacement and that there are existing front yard easements which resulted in the home being constructed way back on the lot. He stated he believes an obvious hardship exists here. A slide depicting the site layout and area sites was shown as well as photos of the property. Jason advised the members that the deck is needed in order for the owner to exit the back of the house. He stated the existing deck is in disrepair and needs to be replaced. He stated that he reviewed minutes of the Board of Adjustment from the 1970's and could find nothing allowing the deck in its current location. He commented that if the deck were simply repaired, no variance would be required.

Chairman Soule thanked Jason for the project overview.

Leland Curtis presented the following City Exhibits and requested that they be entered into the record, as follows: City's Code of Ordinances, specifically the Zoning Ordinance Article 15.8 (2) and City's Master Plan, application for Zoning Review, Zoning Review denial letter as prepared by Jason Jaggi, application for appeal, public hearing notice which was duly advertised, drawings submitted by applicant, supporting documents and staff's report. City staff's presentation is also entered into the record. Mr. Curtis asked that Page 4 of Staff's Report under Analysis (A) that the "No" be changed to "Yes".

The change was duly noted.

Mr. Lingo stated that Jason summed up their request completely. He stated the new deck will be the same size and shape as the existing deck and that Ms. Bussmann is the original homeowner. He stated the deck, which has rotted sub-boards, has been in place for 30 years and that the position of the house on the lot is unusual.

Mel Disney asked about height requirements with regard to the deck.

Jason Jaggi indicated that a building permit will have to be secured prior to the re-construction and building code requirements reviewed by the Building Official at that time.

Chairman Soule asked if staff believes the placement of the house on the lot is a hardship.

Jason Jaggi replied "yes".

Chairman Soule asked if the variance would have a detrimental effect on the public safety and welfare.

Jason Jaggi replied "no".

Chairman Soule asked if the deck is an original feature of the home.

Jason Jaggi replied "yes".

Chairman Soule asked if decks are a common amenity.

Jason Jaggi replied "yes".

Being no further questions or comments, Chairman Soule made a motion to grant a 9.07' foot variance from the 26.07' rear yard setback requirement for the deck. The motion was seconded by Rick Bliss and was unanimously approved by the Board.

Jason Jaggi noted there will be no meeting in February.

Being no further business for the Board of Adjustment, this meeting adjourned at 6:40 p.m.

Recording Secretary